

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jacqueline Asencio	Team: Team # 1	CCRB Case #: 201002667	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 03/01/2010 12:30 AM	Location of Incident: East 229th Street and White Plains Road	Precinct: 47	18 Mo. SOL 9/1/2011	EO SOL 9/1/2011	
Date/Time CV Reported Mon, 03/01/2010 9:37 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 03/01/2010 9:37 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Bennett Shelley	18552	947489	047 PCT
2. POM Michael Corizzi	13632	946879	047 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Bennett Shelley	Abuse: PO Bennett Shelley frisked § 87(2)(b)	
B.POM Bennett Shelley	Abuse: PO Bennett Shelley searched § 87(2)(b)	
C.POM Bennett Shelley	Abuse: PO Bennett Shelley searched the car in which § 87(2)(b) was an occupant.	
D.POM Michael Corizzi	Abuse: PO Michael Corizzi threatened to arrest § 87(2)(b)	

Case Summary

§ 87(2)(b) filed this complaint by phone with the CCRB on March 1, 2010. On March 1, 2010, at approximately 12:30am, § 87(2)(b) vehicle was pulled over by PO Bennett Shelley and PO Michael Corizzi, both from the 47th Precinct, at East 229th Street and White Plains Road in the Bronx for tinted windows. The following allegations resulted:

Allegation A- Abuse of Authority: PO Bennett Shelley frisked § 87(2)(b)

§ 87(2)(g)

Allegation B- Abuse of Authority: PO Bennett Shelley searched § 87(2)(b)

§ 87(2)(g)

Allegation C- Abuse of Authority: PO Bennett Shelley searched the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(g)

Allegation D- Abuse of Authority: PO Michael Corizzi threatened to arrest § 87(2)(b)

§ 87(2)(g)

Results of Investigation

Civilian Statement

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-year-old black male who is 6'2" tall, weighs 200 pounds and has brown hair and brown eyes. At the time of the incident, § 87(2)(b) was a driver § 87(2)(b).

CCRB Testimony

§ 87(2)(b) provided a statement to the CCRB on March 17, 2010 (encl. 8a-8j). § 87(2)(g) (encl. 7a-7b), and exceptions are noted in the text. On March 1, 2010, at approximately 12:30am, § 87(2)(b) who was wearing blue jeans, a red hoodie, and a black jacket and driving a 2006 silver four-door Infiniti 135X (license plate number § 87(2)(b)) stopped at a red light at the corner of Carpenter Avenue and East 229th Street in the Bronx. § 87(2)(b) was alone in the vehicle and he was heading to his girlfriend's home, located at § 87(2)(b). As § 87(2)(b) waited for the light to change, he saw a marked police vehicle behind him. Later in the interview, § 87(2)(b) mentioned that he first observed the marked police vehicle for a few seconds as he drove down Carpenter Avenue and reached the red light. During those few seconds, the officers had not activated the turret lights. When § 87(2)(b) made a left turn onto East 229th Street, he drove his vehicle slowly because he was looking for a parking spot.

The marked police vehicle drove behind § 87(2)(b) car and flashed its turrets lights. § 87(2)(b) denied making any traffic infractions and believed that the police vehicle wanted to pass him. § 87(2)(b) continued to drive slowly until he found a spot near the intersection of White Plains Road and East 229th Street, and parked the car legally. After he parked his car, § 87(2)(b) grabbed his blue lunch bag and water bottle that were resting on the passenger seat and opened the door to exit the vehicle. § 87(2)(b) did not bend over to get the items. § 87(2)(b) noticed that the police vehicle double-parked behind his car with the turret lights still activated.

As § 87(2)(b) stepped out of the vehicle and was about to close the door, an officer, later identified through investigation as PO Michael Corizzi, a heavy-set white male with medium length black hair, from the 47th Precinct and another officer, later identified through investigation as PO Bennett Shelley, a white male with short blond hair with a medium build, from the 47th Precinct approached him and asked him, “Where are you going?” In his initial complaint narrative, § 87(2)(b) stated that the officers activated something that sounded like a buzzer and instructed him to get back inside the car. As § 87(2)(b) stood by the front of his vehicle, he informed the officers that he was going home. The officers told § 87(2)(b) that they tried to stop him as he was driving the car. § 87(2)(b) told the officers that he did not know they wanted to stop him and told them that he believed they wanted to pass him. § 87(2)(b) denied that he was screaming or yelling at the officers.

At that point, PO Shelley instructed § 87(2)(b) to stand against the car and he complied. § 87(2)(b) was not sure if he placed the lunch bag and the water bottle down on his own or if he was instructed to do so. As § 87(2)(b) stood face-forward by the driver’s side of his car, PO Shelley searched him by placing his hands inside § 87(2)(b) back jeans pocket and all the pockets of his jeans. At the time, § 87(2)(b) had his credit cards, phone, and I-pod in his jean pockets. PO Shelley did not take the items out of his pockets. In his initial complaint narrative to the CCRB, § 87(2)(b) stated that he was frisked and searched during the incident. During this time, PO Corizzi was watching what was taking place.

PO Shelley then asked § 87(2)(b) for his driver’s license. § 87(2)(b) did not know what the officer did with his license and did not see him use a radio to run the license. § 87(2)(b) told PO Shelley that he had not done anything wrong and asked him why he was pulled over. PO Shelley told § 87(2)(b) “Because of the tints.” PO Shelley then instructed § 87(2)(b) to walk to the back of his vehicle and sit on his car’s rear bumper. § 87(2)(b) complied, but explained to PO Shelley that he was tired since he just worked a twelve-hour shift and he wanted to go to sleep. From his position, § 87(2)(b) only observed the marked police vehicle. § 87(2)(b) denied that any argument took place with him and PO Shelley and that he just wanted to explain the situation to him. He denied that he yelled or cursed at PO Shelley.

As § 87(2)(b) sat on his rear bumper, PO Shelley asked him for his registration. § 87(2)(b) informed him that the registration was in the glove box and it was locked. § 87(2)(b) offered to get the registration, but PO Shelley refused. § 87(2)(b) told him that he could follow him to the vehicle and open the glove box and get the registration. PO Shelley refused and asked for the car keys. § 87(2)(b) refused approximately three times to give PO Shelley the keys. PO Shelley was persistent in asking for the car keys and soon PO Corizzi also began to ask for the car keys. To avoid conflict, § 87(2)(b) gave PO Shelley the car keys. PO Shelley went to the car with the key to the glove box as § 87(2)(b) remained at the back of his car. PO Shelley could not open the glove box and walked back to § 87(2)(b). § 87(2)(b) showed PO Shelley and PO Corizzi how to open the glove box as he remained at the back of the car. PO Shelley returned to the

vehicle and opened the glove box and came back to § 87(2)(b) with his registration as PO Corizzi remained with § 87(2)(b). § 87(2)(b) did not observe PO Shelley going into the glove box because he was facing the front of the police vehicle.

PO Corizzi instructed § 87(2)(b) to get back inside his vehicle and he complied and closed the door to his driver's side. During this time, PO Corizzi and PO Shelley went back to their police vehicle. § 87(2)(b) called his girlfriend, § 87(2)(b) to let her know what was going on. PO Corizzi approached § 87(2)(b) driver's side window and asked him what he was doing. § 87(2)(b) told him that he was speaking to his girlfriend. PO Corizzi instructed him to hang up the phone and he complied. PO Corizzi returned to the patrol vehicle. Shortly after, § 87(2)(b) arrived at the scene as did four additional uniformed police officers.

§ 87(2)(b) exited the car and PO Corizzi told him, "Get back in the car. Get back in the car." § 87(2)(b) asked him, "Can I talk to my girlfriend real quick? I just want to explain to her what was going on." PO Corizzi told § 87(2)(b) "No, get back in the car or I will arrest you." § 87(2)(b) § 87(2)(b) complied and sat in his car. § 87(2)(b) remained inside his car and tried talking to § 87(2)(b) as she remained outside of the car in a moderate level tone of voice even though he was upset because he had already been dealing with the officers for half an hour and he was tired. PO Shelley approached § 87(2)(b) driver's side window and handed him six summonses, four summonses for his tinted windows (§ 87(2)(b), § 87(2)(b), § 87(2)(b) and § 87(2)(b) one for § 87(2)(b) (§ 87(2)(b)), and one for § 87(2)(b) (§ 87(2)(b)).

Single Photo Display Viewing

After the interview, § 87(2)(b) was shown a series of single shot photos which included both PO Shelley and PO Corizzi. He did not identify the photographs of PO Shelley or PO Corizzi, but he identified a filler photograph and wrote underneath the picture, "Seventy-five percent sure it [sic] the officer with the black hair" (encl. 8d).

NYPD Statements:

Subject Officer: PO BENNETT SHELLEY

- § 87(2)(b) -year-old white male, height 5'7" tall, weight 160 pounds, brown hair and hazel eyes.
- On March 1, 2010, PO Shelley was assigned to Impact Auto. He worked in uniform with PO Michael Corizzi from 5:30pm to 2:05am in a marked police vehicle.

Memo Book

PO Shelley noted in his memo book that he issued four summonses to § 87(2)(b) and prepared a Stop, Question, and Frisk report for him at 12:45am (encl. 9a-9b).

Summonses

PO Shelley issued § 87(2)(b) four summonses for tinted windows § 87(2)(b), § 87(2)(b) § 87(2)(b) and § 87(2)(b) (encl. 10a).

CCRB Testimony

PO Shelley provided a statement to the CCRB on April 22, 2010 (encl. 11a-11b). On March 1, 2010, at approximately 12:30am, PO Shelley, who was the operator, and PO Corizzi, who was the recorder, were inside their marked police vehicle at the corner of East 232nd Street and Carpenter

Avenue in the Bronx watching cars drive southbound. PO Shelley observed § 87(2)(b) vehicle with tinted windows and drove behind him with the intent to stop him for the tinted windows. It was his decision to stop § 87(2)(b) vehicle. § 87(2)(b) drove to a stop sign then to a red light at East 229th Street and Carpenter Avenue and turned left as the officers followed behind him. PO Shelley did not know how long he observed § 87(2)(b) vehicle before stopping him.

Once § 87(2)(b) vehicle turned left on East 229th Street, the officers activated their turret lights. § 87(2)(b) drove on East 229th Street toward White Plains Road, when he pulled over to the side. PO Shelley pulled up behind § 87(2)(b) vehicle to issue him summonses for the tinted windows. Before the officers were able to get out of their vehicle, § 87(2)(b) exited first with a backpack and started to walk away from the car to cross the street. The officers went over the loudspeaker and told § 87(2)(b) to get back inside his vehicle. § 87(2)(b) refused by walking toward the officers' vehicle. PO Shelley stated that it seemed like § 87(2)(b) was about to approach their car. At that point, PO Shelley exited the police vehicle and approached § 87(2)(b) telling him, "Get back inside the car." PO Shelley was approximately one car length away from § 87(2)(b) at the time. § 87(2)(b) did not comply.

As PO Shelley was approaching § 87(2)(b) he noticed nothing suspicious about him except that he was not complying with his instructions. PO Shelley did not remember if § 87(2)(b) made any hand gestures toward him. PO Shelley told § 87(2)(b) to place his backpack down and proceeded to frisk his pockets since § 87(2)(b) had walked away from them as they were conducting the car stop and he did not comply with his instructions to get back in his car. PO Shelley did not recall what § 87(2)(b) was wearing that morning. PO Shelley felt a cell phone in § 87(2)(b) pocket, but he did not remove the item out of his pocket. As § 87(2)(b) was being frisked, he was agitated, angry, and complaining about work and that he should not have been stopped. During this time, PO Corizzi had exited the passenger side of the police vehicle and was approaching the rear bumper of § 87(2)(b) car.

Once PO Shelley determined that § 87(2)(b) had no weapon, he asked him for his license and registration to issue the summonses. PO Shelley explained to § 87(2)(b) who was standing by the driver's side near the back bumper of his car, that he was stopped because his windows were illegally tinted. § 87(2)(b) told PO Shelley that he did not care and that he had to go to work soon. § 87(2)(b) gave PO Shelley his license but his registration was located in the glove box. PO Shelley asked § 87(2)(b) for the car keys so he could retrieve the registration since the car was locked. After an argument, § 87(2)(b) gave his car keys to him. PO Shelley opened the car, got § 87(2)(b) registration out of the glove box and told § 87(2)(b) to get back inside the car. He complied. During this time, PO Corizzi was standing next to § 87(2)(b).

PO Shelley walked back to his vehicle to write the summonses when he saw § 87(2)(b) who was still agitated and angry, on his cell phone. When PO Shelley told § 87(2)(b) to get off the cell phone, he refused. Approximately five to ten minutes later, § 87(2)(b) girlfriend arrived at the scene. When § 87(2)(b) girlfriend arrived, he got out of his vehicle. § 87(2)(b) was told to get back inside his car, but he refused and stood by the front of his car with his girlfriend yelling and screaming at the officers. PO Shelley did not request for additional units but two foot posts from his command arrived at the scene to see if everything was alright since they heard the commotion. PO Shelley did not recall if the officers from the foot posts had any interactions with § 87(2)(b) and his girlfriend. PO Shelley handed § 87(2)(b) the summonses for the tinted windows. PO Shelley denied that he told § 87(2)(b) that he could have been placed under

arrest. PO Shelley denied that § 87(2)(b) was searched or that his vehicle was searched during the incident.

Subject Officer: PO MICHAEL CORIZZI

- § 87(2)(b) -year-old white male, height 5'9" tall, weight 175 pounds, brown hair and blue eyes.
- On March 1, 2010, PO Corizzi was assigned to Impact Auto. He worked in uniform with PO Bennett Shelley from 5:30pm to 2:05am in a marked police vehicle.

Memo Book

PO Corizzi noted in his memo book that he issued § 87(2)(b) two summonses at 12:45am (encl. 12a-12c).

Summonses

PO Corizzi issued § 87(2)(b) a summons for § 87(2)(b)) and for § 87(2)(b) (encl. 13a).

CCRB Testimony

PO Corizzi provided a statement to the CCRB on April 22, 2010 (encl. 14a-14b). PO Corizzi and PO Shelley observed § 87(2)(b) vehicle on Carpenter Avenue in the Bronx. PO Shelley decided to stop § 87(2)(b) vehicle for tinted windows violation. The officers had their turret lights on for approximately three blocks behind § 87(2)(b) vehicle before he pulled over at East 229th Street and White Plains Road. PO Corizzi did not recall how § 87(2)(b) was driving his vehicle or if he was driving the car slowly.

Upon stopping, § 87(2)(b) exited his vehicle with some sort of bag and began to walk away. The officers exited the vehicle to follow § 87(2)(b) PO Shelley, who stood approximately fifteen to twenty feet away from § 87(2)(b) told him to get back inside the car. § 87(2)(b) did not comply, but PO Corizzi did not recall if § 87(2)(b) said anything to PO Shelley. PO Corizzi did not know if § 87(2)(b) made any gestures that would make PO Shelley suspect that § 87(2)(b) had a weapon. PO Corizzi was suspicious of § 87(2)(b) since it was not normal behavior during a traffic stop for a driver to exit the vehicle. PO Shelley approached § 87(2)(b) and asked him to put down the bag he was carrying. During this time, PO Corizzi was standing behind § 87(2)(b) vehicle, in between § 87(2)(b) car and the police vehicle.

PO Shelley frisked § 87(2)(b) to make sure he was not carrying any weapons since § 87(2)(b) exited the vehicle and tried to walk away. PO Corizzi observed the frisk and saw PO Shelley frisk § 87(2)(b) waistband. He did not recall any other areas where § 87(2)(b) was frisked. PO Shelley did not recover anything from the frisk and he did not remove any items from § 87(2)(b) pockets. PO Shelley asked § 87(2)(b) for his license and registration, and § 87(2)(b) gave the items to PO Shelley. PO Corizzi did not recall if there was any issue with the registration. During this time, § 87(2)(b) was angry, loud, and "incompliant."

After PO Shelley received § 87(2)(b) information, he instructed him to get inside the car and he complied as the officers got back inside their vehicle to write the summonses. As they were inside the car, § 87(2)(b) exited the vehicle again and went to the front of his car to meet his girlfriend. The officers asked § 87(2)(b) numerous times to get back inside his vehicle, but PO Corizzi did not recall if they exited the police vehicle or if they told him over the loudspeaker. § 87(2)(b) refused at first and he became loud. Approximately thirty seconds to a minute later,

§ 87(2)(b) complied and sat back in the car. PO Corizzi mentioned during the interview that § 87(2)(b) could have been placed under arrest for § 87(2)(b), and he stated that it was “more than likely” that he would have told § 87(2)(b) that he could be placed under arrest. PO Corizzi denied that he searched § 87(2)(b) or his vehicle or saw his partner doing so.

NYPD Documents

- **Management Information System Development**

No warrant check for § 87(2)(b) was located even though he was issued summonses, but the MISD report was mistakenly limited to February 2010, which explains this absence (encl. 23d).

- **Stop, Question, and Frisk Log**

The Stop, Question, and Frisk log had no results for § 87(2)(b) (encl. 23i). According to IAB, there was no handwritten Stop, Question, and Frisk report at the 47th Precinct for § 87(2)(b) (encl. 23c).

- **Sprint Print-Out**

At 12:57am, Impact Auto had one male stopped at East 229th Street and White Plains Road. At 12:59am, warrant check negative for § 87(2)(b) (encl. 15a).

- **Roll Call**

The roll call confirmed the officers’ statements regarding their tour and assignments (encl. 16a).

Summons for Incident and Disposition

- On § 87(2)(b), § 87(2)(b) resolved summons numbers § 87(2)(b), § 87(2)(b) and § 87(2)(b) for tinted windows by paying a \$200.00 fine.
- § 87(2)(b), § 87(2)(a) 160.50

Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of June 22, 2010 with regard to the incident (encl. 20a).

Civilian Criminal History

- § 87(2)(b) § 87(2)(c)

Civilian CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 6a).

Subject Officer CCRB History

- PO Bennett Shelley has been a member of the service for two years and there are no substantiated CCRB allegations against him (encl. 4a).
- PO Michael Corizzi has been a member of the service for two years and there are no substantiated CCRB allegations against him (encl. 5a).

Conclusion

Identification of Subject Officers

PO Shelley and PO Corizzi acknowledged that they interacted with § 87(2)(b)

Allegations Not Pled

§ 87(2)(g)

Investigative Findings and Recommendations

Allegation A: Abuse of Authority: PO Bennett Shelley frisked § 87(2)(b)

PO Shelley and PO Corizzi testified that they wanted to stop § 87(2)(b) vehicle for a tinted windows violation. The officers followed § 87(2)(b) vehicle for approximately three blocks until § 87(2)(b) had stopped the car near the intersection of East 229th Street and White Plains Road. § 87(2)(b) testified that he observed the officers' vehicle behind him but believed that they wanted to pass him and therefore he did not immediately pull over. Once he had parked his vehicle, § 87(2)(b) admitted that he exited his car.

When PO Shelley observed § 87(2)(b) walking away from his vehicle, he testified that he and PO Corizzi went over the loudspeaker and instructed § 87(2)(b) to get back inside the car, which § 87(2)(b) initially testified that the officers had done once he had exited his vehicle. PO Shelley testified he frisked § 87(2)(b) after § 87(2)(b) had initially walked away from the officers and had refused to return to his car. PO Corizzi also testified that PO Shelley frisked § 87(2)(b) because § 87(2)(b) had exited his car and walked away as they were conducting the car stop. The officers did not articulate anything about a bulge or anything specific about a weapon or crime they suspected § 87(2)(b) of committing. Furthermore, PO Shelley testified that he noticed nothing suspicious about § 87(2)(b) except that he had exited his vehicle and had not complied with his instructions. § 87(2)(g)

§ 87(2)(g) In New York
Search and Seizure, Kamins states that a frisk “must be based on a reasonable suspicion that a suspect is armed. This suspicion must be based on clear and articulable facts” (encl. 1a-1b). § 87(2)(g)
 § 87(2)(g)

Allegation B: Abuse of Authority: PO Bennett Shelley searched § 87(2)(b)

§ 87(2)(b) alleged that after he exited his vehicle PO Shelley searched his jean pockets. The officers denied that § 87(2)(b) was searched during the incident. § 87(2)(g)

Allegation C: Abuse of Authority: PO Bennett Shelley searched the vehicle in which § 87(2)(b) was an occupant.

When PO Shelley requested § 87(2)(b) registration, he informed the officer that the document was located in his locked vehicle in the glove box. § 87(2)(b) initially refused to give PO Shelley the keys to his vehicle in order to retrieve the registration and insisted that he himself get the information. PO Shelley admitted that he went inside § 87(2)(b) vehicle for the sole

purpose of retrieving the registration. In People v. Philbert, 270 A.D. 2d 210 (1st Dept. 2000), the Court clarified that “a limited search of the glove compartment was upheld as a reasonable method of determining the ownership of the car so that the defendant would not have to be arrested” (encl. 2a-2b) § 87(2)(g)

Allegation D: Abuse of Authority: PO Michael Corizzi threatened to arrest § 87(2)(b)

During the course of the car stop, § 87(2)(b) who was upset and tired, admitted that he exited his vehicle to speak to his girlfriend after the officers told him to remain inside the car. § 87(2)(b) refused to return to the vehicle until PO Corizzi told him that he could be placed under arrest. PO Corizzi testified that § 87(2)(b) was told numerous times to enter his vehicle and he refused and became loud. The officer mentioned that § 87(2)(b) eventually complied and sat back in his car. PO Corizzi testified that it was “more than likely” he would have told § 87(2)(b) that he could be placed under arrest. § 87(2)(g)

§ 87(2)(b) In Police Department vs. Perez and Cruz, Administrative Law Judge Ray Fleischhacker determined that, “telling an upset patron to calm down or he will be arrested is hardly a threat, but rather a useful way to diffuse [sic] a potential physical confrontation” (encl. 3a-3v). § 87(2)(g)

Team: One

:

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date